

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

FEDERAL TRADE COMMISSION, STATE
OF ARIZONA, STATE OF CALIFORNIA,
DISTRICT OF COLUMBIA, STATE OF
ILLINOIS, STATE OF MARYLAND,
STATE OF NEVADA, STATE OF NEW
MEXICO, STATE OF OREGON, and
STATE OF WYOMING,

Plaintiffs,

v.

THE KROGER COMPANY and
ALBERTSONS COMPANIES, INC.,

Defendants

Case No. 3:24-cv-00347-AN

DECLARATION OF JOHN L. ROACH, IV
IN SUPPORT OF NON-PARTY
AMAZON.COM, INC.'S SUPPLEMENTAL
MOTION TO SEAL

AUTHORIZED TO BE FILED UNDER
SEAL

I, John L. Roach, IV, hereby declare as follows:

1. I am currently Corporate Counsel for Amazon.com, Inc ("Amazon"). I have been employed by Amazon since November 2022. Over the course of my employment with Amazon, I have become knowledgeable regarding the sensitivity of Amazon's strategic, business, and marketing information, and regarding Amazon's practices and procedures concerning maintenance of the confidentiality of its internal documents.

2. I submit this declaration in support of Amazon's Supplemental Motion to Seal (the "Supplemental Motion") in the above-captioned proceeding.

3. The facts set forth in this declaration are true and correct to the best of my knowledge, information, and belief, and are based on my personal knowledge of the sensitivity of Amazon's strategic, business, and marketing information, and my personal knowledge of Amazon's practices and procedures concerning the maintenance of the confidentiality of its

internal documents. If called upon as a witness in this proceeding, I could and would testify from my personal knowledge and knowledge acquired from sources with factual foundation.

4. As a matter of routine practice and policy, Amazon and its employees, including its subsidiaries Whole Foods Market, Inc. (“Whole Foods”) and Amazon Fresh LLC (“Amazon Fresh”), strictly treat as confidential, *inter alia*, information about its current and forward-looking pricing and promotional strategies and tactics, pricing analyses, and pricing goals; business plans and marketing strategies; financial information (recent and projections); internal data and information on current and future product launches; analysis of specific regional, department, and product category performance, projects, and plans; analysis and recommendations on specific customer segments; future strategic plans and projections; insights and analyses about key competitors; and other information that, if publicly disclosed, could enable Amazon’s competitors to undermine Amazon’s competitive position, allow current or prospective business partners to take unfair advantage of Amazon in negotiations or other business affairs, violate Amazon’s confidentiality obligations to other parties, or otherwise harm Amazon’s business interests (“Confidential Business Information”). In my experience and to the best of my knowledge, Amazon and its employees do not disclose Confidential Business Information outside the company, except to authorized third parties when so required or permitted by law or contract.

5. To protect Confidential Business Information and prevent inadvertent revelation of Confidential Business Information to others, Amazon has internal policies and practices including the following: policies against the disclosure of confidential and/or financial information; training of employees regarding safeguarding confidential information; confidentiality and non-disclosure agreements with counterparties, vendors, and other partners; and policies regarding document retention and destruction.

6. I understand that Defendants and Plaintiff recently notified Amazon's outside counsel that they intend to use additional documents and information as potential exhibits in the Court's preliminary injunction hearing that Amazon has previously produced in discovery and designated Highly Confidential. As such, the associated Supplemental Motion requests that the Court seal the specific documents and information identified below. For the following reasons, this information is secret, material to Amazon's business, and highly commercially and/or competitively sensitive such that disclosure to the public, or to Amazon's competitors or business partners, would result in serious competitive injury to Amazon.

Documents that Amazon Seeks to Seal in Their Entirety			
Ex. No.	Document Title/Description	Beginning Bates	End Bates
DX271	Whole Foods: California OA Review April 2024	AMZ-KROG-ALB-000000683	AMZ-KROG-ALB-000000735
DX273	Whole Foods: Midwest OA Review April 2024	AMZ-KROG-ALB-000000918	AMZ-KROG-ALB-000000969
DX3014	2024 OP1: Global Competition Update	AMZ-KROG-ALB-000001220	AMZ-KROG-ALB-000001225
PX3634	Appendix 1 – MSS By Category	AMZ-KROG-ALB-000001217	AMZ-KROG-ALB-000001219

7. **Exhibits DX271 and DX273:** These documents are recent Whole Foods presentations from 2024, ranging from approximately 50-100 pages in length, that consist of analyses of Whole Foods' entire business in specific operating regions (with select information for all Whole Foods stores as well as stores in particular states and metro areas). The presentations provide comprehensive and detailed information about Whole Foods' pricing, pricing trends, and price competitiveness and comparisons to specific competitors' pricing; competitive analysis of the industry and specific competitors; internal financial information (recent and projections); marketing and business strategies; internal data and information on current and future product launches; detailed analysis of specific regional, department, and product-category performance,

projects, and plans; analysis and recommendations on specific customer segments; and substantial competitor analyses and comparisons. These highly sensitive data and analyses pervade the entirety of each document.

8. **Exhibit DX3014:** This document is a 2023 document, that consists of analyses of Amazon's business and competition issues, including business unrelated to Amazon's grocery business. The document provides comprehensive and detailed information about Amazon's growth; market share in various business segments; analyses of competitors; potential business strategies; and analyses of marketplace trends. These highly sensitive analyses pervade the entirety of the document.

9. **Exhibit PX3634:** This document is a 2022 document that consist of analyses of Amazon's market segment share for numerous product segments, including many non-grocery-related segments. The document provides comprehensive and detailed information about Amazon's sales, growth, and estimated market segment share in numerous product categories. The highly sensitive data pervades the entirety of the document.

10. The information contained in these documents is recent (three prepared within the last year and one prepared within the last two years), non-public, and competitively sensitive information. If disclosed, this information would permit Amazon's competitors to gain insights into Amazon's operations and strategy that would allow them to unfairly compete against Amazon, including insights about its current and future products, strategic plans, pricing decisions, and store openings, and with respect to particular geographic areas, departments, and product types. This would cause serious harm to Amazon and could harm grocery competition and consumers more broadly.

11. All of these documents, information, and depositions were provided only pursuant to compulsory process issued by Plaintiffs and Defendants (and/or non-party state attorneys general in the parallel proceedings challenging the Kroger/Albertsons transaction). In all cases, Amazon requested that the documents, information, and testimony be provided Highly Confidential or otherwise the highest level of confidential treatment available under the respective laws, regulations, and protective orders, including the Protective Order issued by this Court in this proceeding (and the parallel administrative and state proceedings). But for the need to comply to compulsory process, Amazon would not have made these documents available to Plaintiffs, Defendants, or the public.

12. Amazon is seeking to seal these three documents in this Supplemental Motion as it was not aware until the evening of September 8, 2024 that the parties intended to use them during the upcoming Preliminary Injunction Hearing.

13. The proposed request to seal these materials has been limited to the greatest extent possible and tailored to meet the strict criteria for sealing materials from the public record.

I declare under penalty of perjury that the foregoing is true and correct.

Executed On: September 10, 2024

/s/ John L. Roach, IV

John L. Roach, IV

Corporate Counsel

Amazon.com, Inc.